

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

UNITED STATES OF AMERICA)
)
v.) No. 2:02-CR-032
)
DARIEL THOMPSON)

ORDER

This case is before the court on the defendant's 2011 motion for a reduction in his sentence pursuant to 18 U.S.C. § 3582(c) [doc. 452]. The parties have briefed the motion [docs. 488, 490, 491], agreeing that the defendant is entitled to a sentence reduction but initially disagreeing over the manner in which the reduction should be calculated. The parties have now filed a "Joint Proposed Disposition of Pending Motion to Reduce Sentence Pursuant to 18 U.S.C. § 3582(c)" [doc. 521]. In addition, the Probation Office has provided a Memorandum Regarding Retroactivity.

The defendant was sentenced on January 29, 2004, to a term of 276 months imprisonment on Count One of the indictment for conspiring to distribute and possess with the intent to distribute cocaine base. The parties agreed that the defendant conspired to distribute 43.75 ounces of cocaine base, resulting in a base offense level of 36. The offense level was then increased by four due to the defendant's leadership role and reduced by three for acceptance of responsibility, resulting in a total offense level of 37. The defendant's criminal history category was VI, and his guideline range was 360 months to life. The government filed a motion for downward departure pursuant to U.S.S.G. section 5K1.1

which the court granted. The 276-month sentence was within the guideline range of a three-level reduction.

In October 2008, the government filed a motion for further sentence reduction pursuant to Federal Rule of Criminal Procedure 35. The government recommended a sentence reduction of two levels, specifically asking for a mid-range sentence of 240 months. By order dated November 3, 2008 [doc. 418], the court granted the motion and reduced the defendant's sentence to 240 months.

Turning to the motion now pending before the court, under the retroactive 2007 amendment to the cocaine base guidelines, the defendant's new guideline range is 292 to 365 months (total offense level 35 and criminal history category VI), before any consideration of the government's 5K1.1 and Rule 35 motions. The court has carefully considered the parties' joint proposed disposition, which recommends a sentence of 195 months. That proposal is well-taken and will be accepted by the court.

It is hereby **ORDERED** that the defendant's section 3582(c) motion [doc. 452] and the parties' joint proposed disposition [doc. 521] are **GRANTED**, and the defendant's sentence is reduced to **195 months**. If this sentence is less than the amount of time the defendant has already served, the sentence is reduced to a "time served" sentence. This order shall take effect ten days from its entry in order to give the Bureau of Prisons time to process the defendant's release. Except as provided above, all provisions of the judgment dated February 9, 2004, shall remain in effect.

Lastly, in light of the parties' stipulation and the court's ruling this date, the defendant's motion to expedite [doc. 481] and motion for hearing [doc. 489] are **DENIED AS MOOT.**

ENTER:

s/ Leon Jordan
United States District Judge